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(2) Estimate of core capital coverage or shortfall relative to the estimated minimum capital requirement;

(3) Such other information as may be required by the Director.

(b) The quarterly minimum capital report shall be submitted not later than April 30, July 30, October 30, and January 30 of each year.

(c) Each minimum capital report shall be submitted in writing and in such other format as may be required by the Director.

(d) In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested, which would cause an adjustment to a minimum capital report, the Enterprise shall file with the Director an amended minimum capital report not later than 3 business days after the date of such adjustment.

(e) Each minimum capital report or any amended minimum capital report shall contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

§ 1750.4 Minimum capital requirement computation.

(a) The minimum capital requirement for each Enterprise shall be computed by adding the following amounts:

(1) 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;

(2) 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;

(3) 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(4) 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;

(5) 0.45 percent of the dollar amount of sold portfolio remittances pending;

(6)(i) 3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts,

except to the extent of the current market value of posted qualifying collateral, computed in accordance with appendix A to this subpart;

(ii) 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with appendix A to this subpart; and

(7) 0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

(b) Any asset or financial obligation that is properly classifiable in more than one of the categories enumerated in paragraphs (a) (1) through (7) of this section shall be classified in the category that yields the highest minimum capital requirement.

(c) As used in this section, the term "preceding four quarters" means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

APPENDIX A TO SUBPART A OF PART 1750—MINIMUM CAPITAL COMPONENTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE CONTRACTS

1. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. Credit equivalent amounts are computed for each of the following off-balance sheet interest rate and foreign exchange rate contracts:

a. Interest Rate Contracts

- i. Single currency interest rate swaps.
- ii. Basis swaps.
- iii. Forward rate agreements.
- iv. Interest rate options purchased (including caps, collars, and floors purchased).
- v. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

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b. Foreign Exchange Rate Contracts

- i. Cross-currency interest rate swaps.
- ii. Forward foreign exchange rate contracts.
- iii. Currency options purchased.
- iv. Any other instrument that gives rise to similar credit risks.

2. Foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins are excluded from the minimum capital requirement computation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and foreign exchange rate contracts.

3. Calculation of Credit Equivalent Amounts

a. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate and foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with this appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
1 year or less	0.0	1.0
Over 1 year	0.5	5.0

d. Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been estab-

lished for foreign exchange rate contracts than for interest rate contracts.

e. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. Avoidance of Double Counting

In certain cases, credit exposures arising from the interest rate and foreign exchange instruments covered by this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

5. Collateral

a. The sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a recognized netting agreement exists may not be considered.

b. The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

6. Netting

a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount provided that the following criteria are met:

i. Netting must be accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or

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obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

ii. The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

A. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

B. The law that governs the individual contracts covered by the netting contract; and

C. The law that governs the netting contract.

iii. The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law.

iv. The Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.¹

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of this appendix A and all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as

¹A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

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though they are not subject to the netting contract.

d. The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with paragraph 3 of this appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for minimum capital standard netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

Subpart B—Risk-Based Capital

SOURCE: 66 FR 47806, Sept. 13, 2001, unless otherwise noted.

§ 1750.10 General.

The regulation contained in this subpart B establishes the methodology for computing the risk-based capital level for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains total capital at a level that is